



A discussion moderated by R. Mark Frey with Paschal O. Nwokocha, Gloria Contreras Edin, and Robert P. Webber

IMMIGRATION ROUNDTABLE

The Biden administration so far

Following four years of upheaval under the Trump administration, President Joe Biden took office in January promising stabilization and reform of the U.S. immigration system. Bench & Bar contributor R. Mark Frey—who writes the bimonthly immigration law updates for our Notes & Trends section—recently assembled a panel of his fellow Minnesota immigration attorneys to discuss in writing the legacy of the Trump years and the early moves of the Biden administration. What follows is an edited version of their exchange.

To date, what have been the biggest changes you've personally witnessed in your own immigration practice since President Biden's inauguration? Consider these changes in relation to the administrations of both Presidents Trump and Obama.

PASCHAL O. NWOKOCHA: The biggest change is the sense of relief. Under Trump, it seemed as if everything about immigration was under siege. While Trump was hostile to immigrants and immigration, that sense of hostility is now gone under President Biden. Though immigration laws have not substantively changed under Biden, there is a sense of optimism. Attorneys and members of the immigrant community have confidence that things are going to get better.

For instance, the Biden administration introduced its immigration legislation, and immediately started dismantling the Trump administration's regressive immigration policies and practices. At the same time, we have witnessed a surge in pressure from pro-immigrant groups to ensure that the Biden administration lives up to its promises. Witness the instant pressure on Biden to increase the 2021 refugee numbers to 62,500 after he initially announced his intention to keep admission levels the same as the Trump administration's 15,000.



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Service (CIS), which is the “service” part of the Department of Homeland Security. This change in emphasis resonates in how immigration is perceived by both immigration attorneys and immigrants.

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We have also witnessed a change in priority for immigration enforcement. Soon after his inauguration, Trump issued an executive order (EO 13768, 1/25/2017) that extensively expanded the class of noncitizens who are priorities for removal to include “all removal aliens,” which the Pew Research Center estimates to be about 10 million. This was in sharp contrast with Obama removal priorities that focused on criminal aliens, those who recently crossed the border illegally, and those with recent removal orders. Immediately following his inauguration, Biden reversed the Trump order, refocusing ICE on the Obama-era removal priorities. We expect this change to result in reduction in ICE enforcement actions and removal cases.

The Immigration Court is under the Justice Department, and the Attorney General of the United States is required to craft a functioning immigration court system run by impartial judges who apply existing law to the evidence on the record, following a full and fair hearing. The Trump administration sought to align the immigration courts with the administration’s enforcement goals. To this end, the attorneys general issued several decisions that were binding on the immigration courts, resulting in denials of applications for immigration benefits.

The U.S. State Department directed embassies to employ “extreme vetting” as a measure to disqualify some people from entering the U.S. The USCIS implemented “public charge” rules that targeted a segment of the population from coming or staying in the U.S.; under Trump the minimal amount required of investors seeking to get Permanent Residency in the U.S. went from \$500,000 to \$900,000. Trump proposed dramatic increases in USCIS filing fees, including an 83 percent hike in the cost of application for U.S. citizenship. Foreign nationals who were granted Temporary Protected Status in the U.S. because of natural disasters or armed conflict in their home countries were told to get ready to return home. In general, the Trump administration was the most immigrant-hostile administration we have witnessed in generations.

So far, the Biden Administration appears to focus on the Citizenship and Immigration Service (CIS), which is the “service” part of the Department of Homeland Security. This change in emphasis resonates in how immigration is perceived by both immigration attorneys and immigrants. Biden and his team have gone to great lengths to show they do not view immigrants as the enemies of the country, or that deportation is the sole role of DHS. This change in focus also aligns with the DHS focus seen in the latter part of Obama’s administration.

At a practical level for immigration attorneys, it is a relief to work with government immigration prosecutors who are once again able to exercise discretion and resolve or dismiss deportation cases that did not belong in immigration court. It has been

refreshing to get a call from a USCIS officer seeking for an efficient way to resolve a matter, or to get a call from U.S. consulate officers seeking to facilitate visa interviews for immigrants stranded overseas.

GLORIA CONTRERAS EDIN: The biggest change I have personally witnessed since the president’s inauguration has been a community-wide exhalation and new sense of hope for immigration reform. Many of my clients are relieved and feel more confident coming forward to file applications for citizenship and naturalization, or family-based visas for their relatives back home.

At the same time, many are frustrated with the backlogs and delays that occurred as a result of the Trump administration’s efforts to prevent people from seeking a visa or immigration relief in the United States. For example, we have seen a significant backlog of U-Visas (those available to victims of crime) with increased wait times of up to five years, as well as a backlog for citizenship applications.

R. MARK FREY: The new Biden administration has swiftly and resoundingly rolled back many of the policies imposed by its predecessor. Just a few that come to mind: rescinding the so-called Muslim Ban and refugee ban; implementing a different and evolving approach to the southern border; ending the previous administration’s proclamations banning immigrants and nonimmigrants; extending or redesignating certain countries for temporary protected status; endeavoring to restore asylum law and protections in place before being eviscerated by the preceding administration; and establishing a new set of ICE enforcement priorities.

Notwithstanding these significant revisions, the primary change has to do with attitude. And by that I mean attitude toward immigrants. The preceding administration, quite frankly, vilified immigrants as outsiders, interlopers, and criminals, all the while sowing division and hostility—ironic given our origins as a nation of immigrants. This change has affected clients and potential clients I’ve recently encountered who believe the Biden administration perceives immigrants more positively.

In fact, President Biden’s February 2021 Executive Order 14012, “Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans,” explicitly affirmed our nation’s character as one of opportunity and welcome, calling for the federal government to develop welcoming strategies promoting integration, inclusion, and citizenship. While the Biden administration’s rollbacks of the previous administration’s policies and actions are laudable and harken back to the Obama era, there seems to be a recognition that lessons were learned from some mistakes made by that administration and the times call for a more energized and active approach—comprehensive immigration reform. President Biden’s introduction of a major immigration reform bill on his first day in office makes that abundantly clear. It remains to be seen if Congress has the will to pursue those sorely needed changes.

ROBERT P. WEBBER: The Biden administration has obviously positioned itself as more pro-immigrant than the Trump administration. In our practice at Dorsey, our clients have benefited from the elimination of the I-944 public charge form (and related questions on the I-129). The removal of some of the travel bans has not created as much benefit as we had hoped, as U.S. consulates remain relatively hard to reach for appointments, and Europe and now India are subject to travel limitations. Also, processing times for EB immigration benefits are incredibly slow, both for receipts and actual adjudications (apart from premium processing). The lack of intensity in clearing the backlogs has been disappointing.

President Biden signed multiple executive orders related to immigration in February.



President Biden believes our country is safer, stronger, and more prosperous when we welcome immigrants. This afternoon, he'll build on previous actions and take steps to rebuild and strengthen our immigration system.

 The White House
February 2, 2021

In retrospect, what impact has the Trump administration's immigration policies had on the U.S. business community? Under the Biden administration, what major changes have occurred to date and what do you foresee on the horizon for immigration policy and the U.S. business community?

ROBERT P. WEBBER: The Trump administration clearly had a point of view on immigration, namely that foreign workers competed with U.S. workers and by limiting foreign workers, you protected the wages and working conditions of U.S. workers. It was “zero sum”—the feeling was that each foreign worker potentially displaces a U.S. worker. From the perspective of people who support that position, the Trump administration was very active (arguably aggressive) in making policy changes toward limiting foreign workers.

The challenge for the Biden administration is making pro-immigration policies as actively as the Trump administration made ‘restrictionist’ policies. In a way it is a boon to the Trump administration that the Biden administration is just trying to roll back Trump policy changes. This means that immigration will ‘go back’ to 2015-2016; but those of us who were involved in immigration at that time know it was not very good back then. So rather than move the ball truly forward, we are just trying to get back to par.



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R. MARK FREY: In general terms, I can say that I’ve seen, over the past four years, actions reflecting a general animosity toward foreign nationals who by all accounts have made and are making significant contributions to the U.S. economy. The previous administration’s policies effectively created chaos and unpredictability, a condition typically spurned by the business community. The Biden administration, after only a few months, has sought to assuage the business community’s fears of that chaos by injecting more order into the process and creating more predictability. I think the Biden administration, through its ongoing immigration reform proposals, is seeking to implement a more orderly system reliant upon a temporary worker visa system that responds to the fluid needs of the economy and attracts top-flight talent from around the world.

GLORIA CONTRERAS EDIN: The Trump administration’s immigration policies decreased available skilled and unskilled workers, which led to a labor shortage that was then exacerbated by covid. Trump made it difficult to obtain employment documents for a variety of populations (e.g., forcing asylum seekers to wait 365 days instead of 180 before they are eligible to receive work authorization), which in turn prevented hundreds of thousands of individuals presently in the United States from being able to lawfully contribute and help businesses find the employees or contractors they need to operate their businesses.

Even before he was elected, President Biden made it clear that he would make immigration a priority, making it easier to reunite families and to secure more employment-based work visas. One of the biggest changes that has occurred since Biden took office has been the reunification of families and children at the border, reducing the amount of time that women and children are detained. Another significant change has been modernizing the immigration system through the development of a new electronic case filing system for immigration courts across the country. The goal is that by the end of 2021, all immigration courts will have implemented the system.

PASCHAL O. NWOKOCHA: Former President Trump and his administration created a perception around the world that the U.S. and its leaders are xenophobes. This is an impression that will take a while to erase. The former administration did all it could to show that the only type of immigrants welcome to the U.S. were the wealthy and Europeans.

The Trump administration demonstrated the extent to which the executive branch can go with executive orders and actions. He showed that immigration policies can be changed immediately, with extensive consequences for businesses, educational institutions, tourism, and families. The various Trump travel bans affected many businesses. U.S. universities saw a 43 percent decline in enrollment of international students, and not just because of the pandemic. Hospitals and tourism industries were also significantly affected by the travel bans. During the same time, other countries, including Canada, saw a spike in foreign student enrollment and professionals relocating to those countries.

Deferred Action for Childhood Arrivals (DACA) is an Obama-era policy meant to protect individuals who were brought into the U.S. before their 16th birthday and have been physically present in the U.S. since 2012, from deportation. For most DREAMers, the United States is the only country they have known. Businesses and DREAMers believe that under

Biden, they will not be deported; a lasting solution will be found for their situations.

The Trump administration all but ended temporary protected status (TPS) for nationals from El Salvador, Haiti, Honduras, Nicaragua, Nepal, and Sudan, affecting more than 300,000 people and their authorization to work in the United States. Litigation in federal court enjoined the termination of their status until Biden was inaugurated. Since then, Biden has announced his intention to renew TPS for these countries. In May 2021, he announced the grant of TPS for Haitians, reversing the Trump decision. This, along with other executive actions and policies, are what businesses and immigration advocates expect of Biden.

The biggest change that has occurred is the sense that America is open again. While we do not have the statistics and the pandemic has slowed global movement, it is inevitable that those institutions affected by Trump policies will rebound, albeit slowly. The Biden administration has now reversed all the Trump immigration executive orders. Now, there is a palpable sense of relief that things will eventually return to normal, and positive immigration changes are possible. At the same time, there is also the reality that comprehensive immigration reform may not happen soon. Instead, reform will come in pieces, and through executive policies.

How does the Biden administration differ from the Trump administration in its approach to those seeking asylum at our southern border?

GLORIA CONTRERAS EDIN: The greatest impact that I have personally witnessed since President Biden's inauguration has been trying to meet the needs of our local immigrant and refugee families who have relatives and children detained at the border, seeking to be reunited with their families in the United States. Detention facilities are still saturated with hundreds of individuals waiting to be processed through the labyrinth of our immigration system. As a result, our firm has seen a significant increase in consultations for new asylees, and refugees coming to the United States. Since January 2021 we've seen an uptick in consultation requests to assist families with locating and representing relatives who are detained and waiting for hearings along the southern border.



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The United States Mexico International Border Wall between Sunland Park New Mexico and Puerto Anapra, Chihuahua Mexico



PASCHAL O. NWOKOCHA: The Trump administration set out to destroy and undermine institutions and systems that had been in place for many years. The U.S. asylum laws were greatly informed by the experience of World War II, and the commitment by the nation to never turn its back on those fleeing persecution. Whether it was the instability in Southeast Asia in the 1960s, the political upheavals in South America in the 1970s, the fallout after the collapse of the Soviet Union, or the civil wars in Liberia and in the horn of Africa—through each of these periods, the U.S. asylum system withstood the pressure.

Trump saw the asylum problems as political opportunities. We cannot forget the constant drumbeats of migrant caravans invading the U.S. just before the 2018 midterm elections. Under Trump, few areas of immigration law experienced as many changes as the U.S. asylum laws. All the changes were aimed at discouraging applicants from seeking asylum. Trump had a policy of separating children from their parents; it was supposed to be a deterrent. Starting in January 2019, the Trump administration implemented the Migration Protection Protocol (MPP) that required those seeking asylum at the southern border to remain in Mexico for the duration of their immigration court proceedings.

Biden inherited a major problem, exacerbated by the Trump's punitive asylum policies and the covid-19 pandemic. These problems did not develop overnight and will take time to resolve. His administration has put some semblance of order to a very complex situation. For instance, there has been a remarkable change in the way our government is dealing with the problem of children seeking asylum at the border. Children are no longer detained for an extended period; instead, they are allowed to enter and remain in the U.S. with their family members while their cases are resolved.

ROBERT P. WEBBER: Because I practice employment-based immigration, I do not follow the issues at the southern border closely. But there is clearly an uptick in the number of people trying to cross and it is widely known how problematic the situation is. Tough choices will need to be made. But there will hopefully be a way to be tough and practical without being cruel and rhetorically ugly.

R. MARK FREY: There are admittedly large numbers of people, including unaccompanied young children, seeking asylum at the southern border. This is not a simple story of mere economic migrants seeking a better livelihood for themselves. It's more complex. The situation in the Northern Triangle (Guatemala, Honduras, and El Salvador) is one encompassing several reasons for their flight: dangerous situations involving gang violence, crime, government corruption, climate change, and, yes, even economic calamities.

The previous administration simply denounced them for coming to the southern border and did nothing to address the root causes. It ignored existing U.S. law and international agreements for the processing of people so situated. It's not a long-term solution to separate children from their parents, placing them in cages, all without keeping sufficient records to ensure they'd be reunited with their families. It's not a long-term solution to turn people away, telling them to wait in Mexico.

Once in office, the Biden administration immediately commenced efforts to impose more order on the chaos left it by the previous administration. I suspect their efforts will continue to evolve as they take different approaches to the southern border. I understand the Biden administration commenced working in February with those Central American countries to develop a regional strategy seeking solutions to the migration of peoples to the southern border. And, in March, the administration restarted the valuable Central American Minors Program. Admittedly, this all is a work in progress, but I think it can safely be said that now there are efforts to place some order on the chaos and start tackling the root causes for the surge in peoples at the southern border.



I think the Biden administration, through its ongoing immigration reform proposals, is seeking to implement a more orderly system reliant upon a temporary worker visa system that responds to the fluid needs of the economy and attracts top-flight talent from around the world.

— R. MARK FREY

What long-term impact do you see resulting from the Trump administration's approach to immigration?

R. MARK FREY: The Biden administration and the courts can and will ameliorate many of the egregious short-term effects of policies and actions from the previous administration, but it will take years to repair the damage done to international relations. Can countries trust the United States in its agreements? Do international students wish to come to the United States to study? Do workers with special skills and talents look to the United States as the first country of choice? Does the United States still adhere to a Constitution affording protections to all peoples?

At the same time, one finds a heightened level of division and hostility between groups and a distrust of government in general. The ensuing chaos has created a sense that the United States is a dangerous place for those from other lands or backgrounds different from the majority population. By the same token, the Biden administration clearly understands the risks and has already begun to address these concerns and fears. It seems the lessons learned during the Obama era have formed an integral part of this administration's nuanced approach to immigration as it seeks to develop a system for the 21st century that is cognizant of the interlocking pieces (climate change, migration, global economics, alliances, regionalism, international conflicts, and empathy) and how they work.

ROBERT P. WEBBER: As I noted earlier, in some ways the legacy of the Trump administration was to be so active on immigration than the Biden administration must spend a huge amount of energy just to 'return to par,' and there is really little energy to move the ball truly forward. It seems extremely unlikely some kind of big immigration reform bill will pass Congress. And even regulatory policy changes by the Biden executive branch are focused on getting back to where things were in 2015-2016. The Trump administration policy changes and the pandemic have created unprecedented backlogs, and clearing up the backlogs should be a very high priority—but the backlog clean-up has been slow, and frustrating to clients.

PASCHAL O. NWOKOCHA: Trump exposed the level and extent of changes one administration could bring to bear on U.S. immigration. He also revealed the vulnerabilities of the U.S. immigration system. Educational institutions will continue to see a reduction of enrollment of foreign students as those students and their families explore other countries. Employers with options of locating skilled workers either to the U.S. or to other developed countries now have additional reasons to avoid the U.S. The skilled workers and their families will likely prefer a more welcoming country.

Trump showed that a large portion of the American public share his sentiments about immigration, or worse, do not care about immigrants. These anti-immigrant sentiments did not disappear when Biden took office, and they will continue to be exploited by politicians and other entities who could profit from such attitudes. The question, then, is whether leaders will come together to make sure a lasting solution is agreed to, or whether this lacuna in our system will remain for the next president to exploit.

American society is now conscious of the discriminatory treatment of people of color, which happens to encompass a large proportion of the immigrant population. We have seen the violent attacks on Asians, Hispanics, and other minorities solely because of their physical features. The current discussions of how these social maladies are to be resolved must include the

immigration problem—and therein lies one of the legacies of Trump. He specifically demonized immigrants so that they became targets of unprecedented hate and violence.

From the moment he announced his presidential campaign, Trump was clear that he would run his campaign on xenophobia. This decision did not come from nowhere. Anti-immigrant policies breathed life into his administration, sustained it, and continued through his re-election campaign. One of the lasting legacies of his administration is the emboldening of a segment of our electorate to embrace anti-immigration as a philosophy. Some politicians—on both sides—see no benefit in comprehensively resolving the immigration system, and would prefer to leave it as a perennial, divisive issue which they can continually benefit from.

GLORIA CONTRERAS EDIN: Trump's administration exacerbated the fear and lack of trust in our already broken immigration system. As an immigration lawyer I've met with thousands of individuals who have lived in the United States for 20-plus years and still don't have permanent status (such as those with DACA or temporary protected status) who pay taxes, own businesses, employ people, own their own homes, and give back to their communities. While President Trump was in office, many of them hid in the shadows, fearing that he would take their employment authorization documents away and send them back to a county where many had not been in over 20 years. President Biden inspired a new sense of hope, but trust takes time to build and he may not be able to work fast enough to move the mountain of mistrust that was magnified by a president who implemented harsh and racist initiatives against immigrants and refugees. As we wait for change, I continue to work really hard to encourage my clients to maintain hope for a better tomorrow. ▲

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